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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2014-0002]

Notice of Buy America Waiver for a Cross-Connect Cabinet

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America Waiver.

SUMMARY: In response to the City of Cincinnati (Cincinnati) request for a Buy America waiver for a cross-connect cabinet, the Federal Transit Administration (FTA) hereby waives its Buy America requirements for the cross-connect cabinet needed for a Cincinnati Bell utility relocation associated with the Cincinnati Streetcar project. This waiver is limited to a single procurement for the cross-connect cabinet for the Cincinnati Streetcar project.

FOR FURTHER INFORMATION CONTACT: Mary J. Lee, FTA Attorney-Advisor, at (202) 366-0985 or mary.j.lee@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that the Federal Transit Administration (FTA) has granted a non-availability waiver for the procurement of a cross-connect cabinet that will be used in a utility relocation performed by Cincinnati Bell. This utility relocation will be performed in connection with the Cincinnati Streetcar project, which is an FTA-funded project.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C.

5323(j)(1). A manufactured product is considered produced in the United States if: (1) all of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that “the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,” then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

On September 30, 2013, the City of Cincinnati (Cincinnati) formally requested a non-availability waiver for the procurement of one cross-connect cabinet.¹ In its request, Cincinnati stated that the only known cross-connect cabinet that complies with Cincinnati Bell’s network specifications and service protocols is the Tyco Electronics (TE) NGXC pad mount cross-connect cabinet. At this time, deviations from the use of this particular cross-connect cabinet would result in impacts that would cascade down from the installation, maintenance, and emergency repair aspects, to operational impacts due to hardware incompatibility.

On October 17, 2013, Cincinnati alerted FTA that Cincinnati Bell had installed the cross-connect cabinet in order to comply with its scheduling demands. Unfortunately, because almost all FTA employees were furloughed during this time due to a partial government shutdown, Cincinnati was unable to consult with FTA on how to proceed.

On February 18, 2014, FTA published a notice to request comments on the Cincinnati’s waiver request for the cross-connect cabinet. The comment period closed on March 4, 2014. FTA did not receive any comments to the docket, docket number FTA-2014-0002.

¹ This request was the result of several informal communications between FTA, Cincinnati, and Cincinnati Bell to work through all of the Buy America issues. The availability of a domestic cross-connect cabinet that meets Cincinnati Bell’s specifications in order to conform to its telecommunications network is the only remaining issue.

Based upon Cincinnati Bell's assertions that it is unable to procure a U.S.-manufactured cross-connect cabinet at this time that is configured for Cincinnati Bell's telecommunications network and meets Cincinnati Bell's engineering standards, FTA hereby waives its Buy America requirement for manufactured products under 49 CFR 661.5(d) for the cross-connect cabinet. This waiver is limited to a single procurement for the cross-connect cabinet for the Cincinnati Streetcar project.

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